## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

## GREENVILLE FEDERALFINANCIAL CORPORATION d/b/a GREENVILLE FEDERAL

and

Cases 09-CA-075284 09-CA-081417 09-CA-086178

TAMARA SACKETT

## ORDER DENYING MOTION<sup>1</sup>

Upon charges and an amended charge filed by Tamara Sackett on February 24, May 21, July 20, and July 27, 2012, the General Counsel issued a consolidated complaint against Greenville Federal Financial Corporation d/b/a Greenville Federal, the Respondent, on September 26, 2012, alleging that it violated Section 8(a)(1) and (4) of the Act. On October 25, 2012, the Regional Director of Region 9 approved an informal settlement agreement as resolution of the allegations in the consolidated complaint.

Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to "revise Tammy Sackett's 2012 Annual Appraisal and remove from it and its Action Plan any negative comments about Sackett's protected concerted activities, as well as language directing Sackett to '[r]efrain from unwelcome conversations or actions that would make others uncomfortable, especially regarding sensitive matters." The Respondent further agreed that it would re-evaluate Sackett for a merit raise based on the revised appraisal and pay her for any loss of wages or other benefits suffered due to the negative comments based on her protected concerted activity contained in her 2012 Annual Appraisal. The settlement agreement also contained the following provision:

<sup>&</sup>lt;sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

Thereafter, the General Counsel informed the Respondent that it had not complied with the settlement agreement, set out the actions needed for compliance, and indicated that if the Respondent did not cure its non-compliance, the Regional Director would reissue the complaint, in accordance with the performance clause of the settlement agreement. The Respondent responded that it did not consider itself to be in non-compliance, and it declined to take further action.

Accordingly, on August 22, 2013, the Regional Director reissued the Order Consolidating Cases and Consolidated Complaint. On August 23, 2013, also in accordance with the settlement agreement, the Regional Director filed a motion for default judgment with the Board, along with a supporting brief asserting that the Respondent had defaulted on the terms of the settlement agreement. On August 27, 2013, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the motion should not be granted. On September 10, 2013, the

Respondent filed a memorandum in opposition to the motion for default judgment, disputing the allegation that the settlement had been breached. On September 20, 2013, the General Counsel filed a response.

Having duly considered the matter, we find that default judgment is not appropriate under the circumstances of this case because, based on the conflicting representations of the parties, genuine issues of material fact exist which prevent a final determination as to whether the terms of the settlement agreement have been breached.

In his Motion for Default Judgment, the General Counsel acknowledges that the Respondent issued Sackett a revised appraisal in which it deleted the phrase from the 2012 appraisal that is specified in the settlement agreement and one other comment. However, the General Counsel contends that the Respondent failed to delete three other negative comments from the 2012 appraisal related to Sackett's protected concerted activities and denied Sackett a merit raise based on the non-compliant revised evaluation. The Respondent does not dispute that it failed to remove the three references that the General Counsel claims violate the terms of the settlement agreement, but argues that these comments do not reference Sackett's protected concerted activities. Thus, a factual dispute exists as to whether the comments that the Respondent did not delete from Sackett's appraisal actually refer to Sackett's protected concerted activity or some other unprotected conduct.<sup>2</sup> If the Respondent's assertion that it complied with the terms of the settlement agreement is true, dismissal of the

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<sup>&</sup>lt;sup>2</sup> The General Counsel specified in the settlement agreement that certain quoted language was to be removed but, without explanation, left the Respondent to interpret what other language was encompassed by the phrase "any negative comments about Sackett's protected concerted activities."

complaint is warranted. We therefore find that the denials contained in the Respondent's response to the Notice to Show Cause, filed in accordance with the settlement agreement, are sufficient to require a hearing on the question of whether the Respondent fully complied with the terms of the settlement agreement.

Accordingly, we deny the General Counsel's motion for default judgment and remand this proceeding to the Regional Director for Region 9 for further appropriate action.

Dated, Washington, D.C., March12, 2014

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER